Lee Heng Moy (f) v John Hancock Life Insurance (M) Bhd & Anor

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02–1248 OF 2004

MOHD GHAZALI FCJ, ABU SAMAH AND WAN ADNAN MUHAMAD JJCA

9 SEPTEMBER 2009

Insurance — Life insurance — Beneficiary — Nomination of 'second wife' as beneficiary — Competing claims by lawful wife and 'second wife' — Whether lawful wife had better claim than second wife who was beneficiary named in policy — Insurance Act 1996 ss 163(1), 165(1), 166(3) & 167(1)

On 3 June 1995, Tan Hock Low ('the deceased') took a policy of life insurance ('the policy') with the first respondent and named one Gan Chen Wan ('the second respondent') whom he described as his wife to be the beneficiary under the policy. When the deceased passed away on 2 January 2003, Lee Heng Moy ('the appellant') made a claim on the sum insured on the grounds that she was the deceased's lawful wife. The second respondent also made a similar claim on the insured sum as the beneficiary of the policy. When the first respondent insurance company was confronted with two competing claims to the insured sum amounting to RM352,229.39 it filed the instant interpleader summons under O 17 of the Rules of the High Court 1980 to have the matter settled by way of an order of court. The appellant thereafter filed her affidavit wherein she deposed that as the lawful wife of the deceased she was entitled to the insured sum which should form part of the estate of the deceased and be shared among the lawful beneficiaries. The second respondent claimed that she had a better claim as the beneficiary named in the policy. She further claimed that she was the second wife of the deceased. The trial judge found the second respondent to be the lawful beneficiary of the policy under the Insurance Act 1996 ('the Act'). He held that the provisions of ss 163 and 165 of the Act made it clear that the beneficiary of a policy of insurance was not confined to a wife and that since the deceased had in fact nominated the second respondent, she was the lawful beneficiary of the policy. The appellant appealed against this decision wherein she maintained that as the lawful wife of the deceased she was entitled to the insured sum.

Held, dismissing the appeal with costs:

(1) Based on the provisions of the Act, the Civil Law Act 1956 and the Law Reform (Divorce and Marriage) Act 1976 and the terms of the policy and the proposal form it was clear that the trial judge was right in finding the second respondent to be the lawful beneficiary of the policy. From the policy issued pursuant to the proposal form submitted by the deceased, it was clear that the deceased intended the second respondent to be the beneficiary of the policy. Under s 166(3) of the Act the insured was allowed to appoint trustees of the policy moneys and this he had done by appointing himself and the second respondent as joint trustees of the policy moneys (see paras 12–13).

(2) Under s 163(1) of the Act, the deceased was free to nominate a natural person not necessarily his wife to receive policy moneys under the policy. Since such nomination had been made in accordance with the Act, the first respondent should by virtue of s 165(1) of the Act pay the policy moneys of the deceased according to the direction of the nomination upon receipt of a claim by the second respondent. Although the second respondent was not the lawful spouse of the deceased, under s 167(1) of the Act the second respondent as the nominee under the policy held and received the policy moneys as an executor and not solely as a beneficiary and any payment to the nominee as such shall form part of the estate of the deceased and be subject to the deceased's debts (see para 14).

[Bahasa Malaysia summary

Pada 3 Jun 1995, Tan Hock Low ('si mati') mengambil polisi insurans ('polisi') dengan responden pertama dan menamakan Gan Chen Wan ('responden kedua') yang diperkenalkan sebagai isterinya untuk menjadi benefisiari di bawah polisi tersebut. Apabila si mati meninggal dunia pada 2 Januari 2003, Lee Heng Moy ('perayu') membuat tuntutan ke atas jumlah yang diinsuranskan atas dasar bahawa dia merupakan isteri si mati yang sah. Responden kedua juga membuat tuntutan yang sama ke atas jumlah yang diinsuranskan sebagai benefisiari polisi tersebut. Apabila syarikat responden pertama berdepan dengan dua tuntutan kepada jumlah insurans sebanyak RM352,229.39 ia memfailkan saman interplider di bawah A 17 Kaedah-Kaedah Mahkamah Tinggi 1980 supaya perkara tersebut diselesaikan melalui perintah mahkamah. Perayu kemudiannya memfailkan afidavitnya yang mana dia mendepos bahawa sebagai isteri si mati yang sah, dia berhak kepada jumlah yang diinsuranskan yang menjadi sebahagian daripada harta pusaka si mati dan dikongsi dengan benefisiari-benefisiari yang sah. Responden kedua mendakwa bahawa dia mempunyai tuntutan yang lebih baik sebagai benefisiari yang dinamakan dalam polisi. Dia selanjutnya

mendakwa bahawa dia merupakan isteri kedua si mati. Hakim perbicaraan mendapati responden kedua merupakan benefisiari polisi yang sah di bawah Akta Insurans 1996 ('Akta'). Dia memutuskan bahawa peruntukan-peruntukan ss 163 dan 165 Akta menjelaskan bahawa benefisiari polisi insurans tidak terhad kepada isteri dan bahawa memandangkan si mati telah menamakan responden kedua, maka dia merupakan benefisiari polisi yang sah. Perayu merayu terhadap keputusan ini di mana dia mengekalkan bahawa sebagai isteri sah si mati, dia berhak kepada jumlah yang diinsuranskan.

Diputuskan, menolak rayuan dengan kos:

(1) Berdasarkan peruntukan-peruntukan Akta Undang-Undang Sivil 1956 dan Akta Membaharui Undang-Undang (Perkahwinan dan Perceraian) 1976 dan terma-terma polisi dan borang cadangan, adalah jelas bahawa hakim perbicaraan betul dalam mendapati responden kedua sebagai benefisiari polisi yang sah. Daripada polisi yang dikeluarkan menurut borang cadangan yang dikemukakan oleh si mati, adalah jelas bahawa si mati berniat bahawa responden kedua menjadi benefisiari polisi tersebut. Di bawah s 166(3) Akta, orang yang diinsuranskan dibenarkan untuk melantik pemegang-pemegang amanah wang polisi dan ini dilakukannya dengan melantik dirinya dan responden kedua sebagai pemegang amanah bersama wang polisi tersebut (lihat perenggan 12–13).

(2) Di bawah s 163(1) Akta, si mati bebas menamakan orang sebenar yang tidak semestinya isterinya untuk menerima wang polisi di bawah polisi. Memandangkan penamaan tersebut dibuat mengikut Akta, responden pertama menurut s 165(1) Akta, perlu membayar wang polisi si mati mengikut arahan penamaan apabila menerima resit tuntutan responden kedua. Walaupun responden kedua bukanlah isteri si mati yang sah, di bawah s 167(1) Akta, responden kedua sebagai orang yang dinamakan di bawah polisi memegang dan menerima wang polisi sebagai wasi dan bukan sepenuhnya sebagai benefisiari dan apa-apa pembayaran kepada penama oleh itu merupakan harta pusaka si mati dan tertakluk kepada hutang-hutang si mati (lihat perenggan 14).]

Notes

For cases on beneficiary, see 8 *Mallal's Digest* (4th Ed, 2006 Reissue) paras 160–183.

Legislation referred to

Civil Law Act 1956 s 23
Insurance Act 1996 ss 163, 163(1), (2), (3), 165, 165(1), 166(1), (1)(a), (3), 167(1)

A Law Reform (Divorce and Marriage) Act 1976 ss 5, 6(1)
Rules of the High Court 1980 O 17

Appellant in person.
SY Ng (Raja Darryl & Loh) for the first respondent.
Second respondent in person.

B

Abu Samah JCA (delivering judgment of the court):

C **[1]** This appeal raised an interesting point of law. The facts are rather fascinating although they are not in dispute other than the marital status of the second respondent. The sole question in this appeal is this. Who is entitled to the insured sum under the life insurance policy No 96291–0 taken out by the insured upon his death?

D **[2]** The facts can be shortly stated as follows. One Tan Hock Low ('deceased'), during his lifetime took a policy of life insurance with John Hancock Life Insurance (M) Bhd ('the first respondent'). In the proposal form the deceased named one Gan Chew Wan, ('the second respondent') as the beneficiary and described her as his wife.

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[3] The endorsements in the policy state that the policy is effected under s 23 of the Civil Law Act 1956 ('CLA 1956') for the benefit of the beneficiary ie the second respondent as trustees of all moneys payable under the policy. Section 23 of the CLA 1956 provides that a policy of insurance effected by
F a man on his own life and expressed to be for the benefit of his wife shall create a trust in favour of the objects therein named and the moneys payable under such policy shall not so long as any object of the trust remains unperformed form part of the estate of the insured or to be subject to his or her debts.

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[4] The policy is dated 3 June 1995 and expires on 3 June 2015. The deceased passed away on 2 January 2003 due to multiple gunshot injuries. By a letter dated 10 February 2003, the appellant made a claim on the sum
H insured on the ground that she is the lawful wife of the deceased. This was followed by another letter dated 24 February 2003 from her then solicitors, Messrs Rama Velu & Associates to the first respondent informing the latter that they have been instructed by the appellant, as the lawful wife of the deceased, to apply for a grant of letters of administration to administer the
I estate of the deceased and that the insured sum should not be paid out to any other person if the beneficiary nominated by the person is other than the appellant.

[5] On 19 December 2003 the second respondent made a similar claim on the insured sum through her then solicitors, Messrs Wong & Associates. On 27 February 2003, her solicitors wrote another letter to the first respondent asking the latter to pay the insured sum to them as solicitors for the second respondent, being the beneficiary of the policy of insurance.

[6] The first respondent was thus confronted with two competing claims to the insured sum amounting to RM352,229.39. The first respondent could have decided on their own and release the insured sum to the second respondent. But they did not want to take the risk. So they decided to take a safer course by filing an interpleader summons under O 17 of the Rules of the High Court 1980 requesting both claimants to come to court and state the circumstances and particulars of their respective claims to the insured sum and that they be bound by whatever order that the court may make.

[7] Both the appellant as well as the second respondent filed their respective affidavits stating the basis of their claims to the insured sum. The appellant deposed that she was the lawful wife of the deceased and exhibited her marriage certificate date 9 October 1991 as proof of her marriage to the deceased. She claimed that the second respondent was not entitled to the insured sum and that it should form part of the estate of the deceased and be shared among the lawful beneficiaries.

[8] The second respondent did not dispute the appellant's marriage to the deceased but claimed that she is the beneficiary named in the policy and had been nominated as a joint trustee with the deceased of all the moneys under the policy. She further claimed that she is the second wife of the deceased and had gone through a marriage according to the deceased's personal law. She exhibited an undated photograph of her wedding with the deceased. By virtue of their marriage, they have been blessed with three children.

[9] The learned judge held that the second respondent was the lawful beneficiary of the policy of insurance by virtue of the Insurance Act 1996 ('Insurance Act'). He was of the view that s 23 of the CLA 1956 and s 166(1) of the Insurance Act did not apply as the second respondent was not the lawful wife of the deceased simply because the deceased could not, under s 5 of the Law Reform (Divorce and Marriage) Act 1976 contract a valid marriage during the subsistence of his first marriage to the appellant. Section 6(1) of the Law Reform (Divorce and Marriage) Act 1976 declares that a marriage contracted in contravention of s 5 shall be void.

[10] The learned judge held that s 23 of the CLA 1956 does not effect the operation of the Insurance Act. The description of the second respondent as the wife is immaterial to a nomination under the Insurance Act. Section

163(1) of the Insurance Act allows the insured to nominate a natural person to receive the policy moneys payable upon his death by giving the requisite notice in writing to the insurer, which the deceased did in this case. Section 165 of the Insurance Act further provides that where a policy owner dies having made a nomination, the insurer shall pay the policy moneys to the nominee upon receipt of such claim and proof of death of the insured. The learned judge was of the view that the provisions of ss 163 and 165 of the Insurance Act make it clear that the beneficiary of a policy of insurance is not confined to a wife. As the deceased had in fact nominated the second respondent, she was therefore the lawful beneficiary of the policy of insurance.

[11] Being dissatisfied with the High Court decision, the appellant appealed to this court. Before us, both the appellant and the second respondent appeared in person without the benefit of counsel. They did however filed written submissions. We had nevertheless the benefit of learned counsel for the first respondent who gave her neutral opinion as an uninterested party. She was of the view that the insured sum should be paid to the second respondent as she is the nominated beneficiary of the policy of insurance.

[12] Upon hearing the parties and after having considered the relevant provisions of the Insurance Act, the CLA 1956 and the Law Reform (Divorce and Marriage) Act 1976 and after scrutinising the terms of the policy and the proposal form, we agree with the decision of the learned judge that the second respondent is the lawful beneficiary of the policy of insurance. The policy was issued pursuant to the proposal form submitted by the deceased. The deceased's intention was very clear. He had, in no uncertain terms, named the second respondent as the beneficiary of the policy of insurance. He had signed the proposal form witnessed by the insurer's agent, who happened to be the second respondent.

[13] But there is nothing wrong with that as s 163(2) of the Insurance Act only prohibits the nominee from being a witness to her own nomination. The nomination was witnessed by another person. Section 166(3) of the Insurance Act allows the insured to appoint trustees of the policy moneys, which the deceased did by appointing himself and the second respondent as joint trustees of the policy moneys. This can be seen from the proposal form itself. The proposal form further spells out the power of trustees. In para D of the proposal form it is stated that the trustees shall have the power to receive the policy moneys. In our view what the deceased did was consistent with and did not contrary to ss 163(1) and (2), 165 and 166(3) of the Insurance Act.

[14] We are of the view that under s 163(1) of the Insurance Act an insured person who has attained the age of eighteen years is free to nominate a natural person, not necessarily his wife or spouse, to receive policy moneys payable under the policy of insurance upon his death. Where such nomination had been made in accordance with the Insurance Act, the insurer shall by virtue of s 165(1) of the same pay the policy moneys of the deceased according to the direction of the nomination, upon receipt of a claim by the nominee with proof of the deceased's death. In this case the second respondent, being the nominee, had made her claim with proof of the deceased's death. We note however that the second respondent is not the lawful spouse of the deceased. As such s 166(1)(a) of the Insurance Act is inapplicable. The applicable section is s 167(1) of the Insurance Act. In view of that section the second respondent, as the nominee under the policy holds and receives the policy moneys as an executor and not solely as a beneficiary and any payment to the nominee as such shall form part of the estate of the deceased and be subject to the deceased debts.

[15] In the premises the appellant's appeal was dismissed with costs. The judgment of the High Court that the second respondent is the lawful beneficiary was affirmed. We also ordered that the deposit be paid to the respondents to account of taxed costs.

Appeal dismissed with costs.

Reported by Kohila Nesan